



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 15, 1999

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: THE COMMITTEE TO ELECT MIKE BURKHOLD TO CONGRESS -
REFERRAL MATTERS

On October 7, 1999 the Commission approved the Final Audit Report on The Committee to Elect Mike Burkhold to Congress (CEMB). The report was released to the public on October 15, 1999. As a result, the following findings from the final audit report are being referred to your office:

II.A. Receipt of Contributions in Excess of the Limitation. The CEMB received 38 contributions from 22 individuals and 9 contributions from 4 political committees which exceeded the contribution limitations by \$18,025 and \$2,375, respectively.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Nicole Clay or Russ Bruner at 694-1200.

Attachment:
Finding II.A., FAR Pgs. 5-8

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II. FINDINGS AND RECOMMENDATIONS

In a written response to the exit conference, the CEMB noted that the mistakes and omissions determined during the audit were mainly due to paperwork errors, high staff turnover which resulted in some confusion in paperwork management, and staff inexperience with federal election finance laws. The CEMB further stated that, any and all findings noted in the audit were a result of mistakes made by a novice campaign.

A. APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Subsection (b)(2)(ii) of Title 11 of the Code of Federal Regulations section 110.1 explains *with respect to any election* means, if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made (emphasis added). A contribution is considered to be made (subsection (6) of this section) when the contributor relinquishes control over the contribution by delivering the contribution to the candidate, the political committee, or an agent of the committee. A mailed contribution is considered made on the date of the postmark.

Section 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);

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- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. Furthermore, a contribution made by more than one person that does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b) or (d), as appropriate, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 441a(a)(2)(A) of Title 2 of the United States Code states, in part, that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

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Section 110.9(a) of Title 11 of the Code of Federal Regulations states, in part, that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

A review of the CEMB's receipts data file, check copies, deposit tickets, and disclosure reports relating to contributions from individuals, identified contributions from 22 individuals, which exceeded the contribution limitation by \$18,025. Of this amount, \$11,750, was excessive for the General Election; the balance, \$6,275, was excessive for the Primary Election.

In addition, four registered political action committees exceeded the contribution limitations by a total of \$2,375. These contributions were excessive for the General Election.

A schedule of the excessive contributions was presented to the Finance Director at the exit conference. The CEMB did not comment at the exit conference, however, in a written response to the exit conference, it states that with the exception of three individuals, the potential excessive contributions noted in the audit were the result of misplaced paperwork. The CEMB defines "misplaced paperwork" as "checks contributed during the right time during the campaign, but missing a primary/general election designation" or "donations made by married couples but missing a letter designating all, or part of the contribution to one spouse or the other." The CEMB states that it has begun fundraising and has refunded as many "potentially excessive" contributions as possible. To date CEMB states that it has refunded \$11,525, in excessive contributions from individuals and that copies of the canceled checks will be provided as soon as they are received. With regard to the excessive contributions from political committees, the CEMB noted the mistakes were "a result of a quite confusing process" involving a joint fundraiser. Each excessive contribution was received through the joint fundraising committee and not identified by the CEMB.

The interim audit report recommended that the CEMB provide evidence that the contributions were either not excessive, or were reattributed, redesignated or refunded in a timely manner. If funds were not available to make refunds the report recommended that the CEMB disclose the excessive contributions as refunds owed to the contributors until such time that funds became available.

In its response to the interim audit report, the CEMB submitted copies of bank statements along with canceled checks to demonstrate its actions to date. Refunds were made totaling \$12,700¹ to individuals and \$1,000 to political committees. The CEMB reported the remaining excessive contributions from individuals of \$5,325 and

¹ Included in this amount is a \$500 refund that the Audit staff was unable to determine whether it cleared the bank, due to lack of documentation.

political committees of \$1,375, as debts owed to the contributors. Further in a written response the CEMB noted, an additional excessive contribution was refunded on June 4, 1999, however, that check had not cleared the bank, as of September 20, 1999. The CEMB states that it is diligently tracking the outcome of this disbursement.

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